IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 1734 OF 2006

Tukaram Narayan Bamnolkar (since deceased) through his L.Rs.... ... Petitioners.

Versus

Kupurchand Jawanmal Oswal (since deceased) through his L.Rs.... ... Respondents.

Ms. Varsha Sawant i/by Ms. Gauri Godse for the Petitioners.
Ms.Sharvan Shailendra i/by Mr. P. S. Dani for the Respondents.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard learned Counsel appearing for the petitioners.

2. Regular Civil Suit No. 57 of 1993 which was filed for seeking decree of eviction on the ground of bonafide requirements, mesne profits and nuisance came to be dismissed by the learned Joint Civil Judge, Junior Division, Alibag, and therefore, the plaintiff filed Civil Appeal No. 68 of 1998 which came to be allowed by the learned Additional District Judge, Raigad-Alibag, vide his judgment and order dated 3rd

December, 2005. By the lower appellate court order the suit was partly decreed and the defendant was directed to handover vacant and peaceful possession of the suit premises to the plaintiff within six months.

3. In this writ petition the decree passed by the lower appellate court under the Bombay Rents Hotels & Lodging House Rates (Control) Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, a writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioner to file a civil revision application and if such a civil revision application is filed within a period of four weeks from today, the period of pendency of this writ petition be taken into consideration for condonation of delay, if any.

5. The ad-interim order granted earlier will continue

to operate for a period of two weeks more from today.

6. Annexures to the petition memo be returned, if applied for.

7. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)